

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/759728  
Applicant : Elliot Schwartz  
Filed : 01/11/2001  
TC/A.U. : 2131  
Examiner : MOORTHY, ARAVIND K  
Confirmation No. : 2453  
Docket No. : Digi-P001  
Customer No. : 40418

COMMUNICATED VIA EFS TO USPTO on 11/10/2009

REQUEST FOR REINSTATEMENT OF APPLICATION FOR PATENT TERM  
ADJUSTMENT

Commissioner for Patents:

Applicant files herewith a Request for reinstatement of previously filed Application for Patent Term Adjustment on the grounds that the dismissal of Nov 6, 2009 was premature.

This communication contains 3 pages total.

Applicant files herewith a Request for reinstatement of previously filed Application for Patent Term Adjustment (Request) on the grounds that the dismissal of Nov 6, 2009 (Decision) was premature and issued in error.

Firstly, the Decision states in ¶ 1 "Applicant appears to request this correction on the basis that the Office will take in excess of three years to issue this patent." The Office has misread the Request which clearly states the bases for adjustment.

Secondly, considering the application was filed in 2001 and the current date is 2009 and still no patent has issued, I believe that we can safely say the USPTO HAS taken more than 3 years to issue the patent.

Thirdly, Applicant submits that as of the current date the PTA is 1454 days.

Fourthly, the Decision addresses 37 CFR 1.702(b) which would be fine IF the Request were ONLY under 1.702(b). Considering that the Request is not exclusively under 1.702(b), the Office cannot unilaterally assign it under 1.702(b) and then dismiss it under 1.702(b). **The Decision is void *ab initio*.**

Fifthly, Applicant has the right and does hereby request reinstatement to preserve any and all rights as may be determined under a final determination of *Wyeth v. Dudas*.

CONCLUSION

Applicant submits that the PTA should be at least 1454 days.

Applicant respectfully requests reinstatement of Applicant's previous APPLICATION FOR PATENT TERM ADJUSTMENT.

Communication via cleartext email is authorized.

Respectfully submitted,

Heimlich Law

11/10/2009 /Alan Heimlich/

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